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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 18-23538 (RDD)
(Jointly Administered)

**STATEMENT OF ISSUES TO BE PRESENTED
AND DESIGNATION OF ITEMS TO BE
INCLUDED IN THE RECORD ON APPEAL**

Community Unit School District 300, an Illinois school district existing and operating pursuant to the Illinois School Code, 105 Illinois Compiled Statutes 5/1-1, et seq. (the “**School District**” or “**Appellant**”), by and through its attorneys, Robbins, Schwartz, Nicholas, Lifton &

Taylor, Ltd., Gensburg Calandriello & Kanter, P.C., and Archer & Greiner, P.C., respectfully submits its statement of issues to be presented on appeal¹ and designating items to be included in the record on appeal with respect to its appeal from the *Order Denying the Motion of Community Unit School District 300 to Deem Economic Development Agreement Rejected Pursuant to the Debtors' Confirmed Chapter 11 Plan, or, in the Alternative, to Compel the Debtors to Reject the Agreement* [Doc. No. 9116] (the “**Order**”), which was entered by the United States Bankruptcy Court for the Southern District of New York (“**Bankruptcy Court**”) on November 23, 2020, pursuant to Federal Rule of Bankruptcy Procedure (“**Bankruptcy Rule**”) 8009(a)(1) and Local Bankruptcy Rule 8009-1:

I: STATEMENT OF ISSUES ON APPEAL

1. Whether the Order is a final order subject to appeal under the provisions of Bankruptcy Rule 8002 or an interlocutory order subject to appeal under the provisions Bankruptcy Rule 8003.

2. Whether the Bankruptcy Court erred in denying the *Motion of Community Unit School District 300 to Deem Economic Development Agreement Rejected Pursuant to the Debtors' Confirmed Chapter 11 Plan, or, in the Alternative, to Compel the Debtors to Reject the Agreement* [Doc. No. 9061] (the “**Motion**”).

3. Whether the Bankruptcy Court erred in finding and/or determining that the Economic Development Agreement referenced in the Motion (the “**EDA Agreement**”) cannot be deemed rejected.

¹ The School District's appeal from the Order has been assigned Case No. 20-cv-10431 (JPC).

4. Whether the Bankruptcy Court erred in ruling that the School District lacks standing to request assumption or rejection of the EDA Agreement under Section 365(d)(2) of the United States Bankruptcy Code (the “**Bankruptcy Code**”).

5. Whether the Bankruptcy Court erred in finding and/or determining that the School District is not a party to the EDA Agreement.

6. Whether the Bankruptcy Court erred in finding and/or determining that the School District, as a third-party beneficiary to the EDA Agreement, does not have standing or right to recovery under the EDA Agreement.

7. Whether the Bankruptcy Court erred in ruling that, absent modification of the plan, an executory contract or unexpired lease cannot be assumed and assigned or rejected through Section 365(d)(2) of the Bankruptcy Code after confirmation of the Debtors’ Chapter 11 plan and pending its effective date, which has yet to occur.

8. Whether the Bankruptcy Court erred in ruling that the Motion does not satisfy the requirements to compel assumption or rejection of the EDA Agreement under Section 365(d)(2) of the Bankruptcy Code or the relevant case law.

9. Whether the Bankruptcy Court erred by finding and/or determining that the debtors retain an economic interest in, and the resulting ability to, assume and assign the EDA Agreement to an entity other than Transform Holdco LLC pursuant to the *Amended Stipulation and Order By and Among the Village of Hoffman Estates, the Debtors, and Community Unit School District 300 Concerning 2017 EDA Funds Held in the Special Tax Allocation Fund* [Doc. No. 5482].

II: DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Pursuant to Bankruptcy Rule 8009(a)(1)(A) and Local Bankruptcy Rule 8009-1, the following table contains the designation of items for inclusion in the record on appeal, identified

by docket number, date, and docket text, pertaining to the above captioned debtors, Sears Holdings Corporation, *et al.*, Chapter 11 Case No. 18-23538 (RDD). Each designated item shall also include any and all exhibits and documents annexed to and referenced within such items.

A. Documents filed in the Bankruptcy Court:

ECF Docket No.	Date	Description
7	10/15/2018	<i>Motion to Approve Debtor in Possession Financing / Debtors Motion for Authority to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, (C) Grant Certain Protections to Prepetition Secured Parties, and (D) Schedule Second Interim Hearing and Final Hearing</i>
557	11/8/2018	<i>Limited Objection of Community Unit School District 300 to Debtors Motion for Authority to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, (C) Grant Certain Protections to Prepetition Secured Parties, and (D) Schedule Second Interim Hearing and Final Hearing</i>
652	11/12/2018	<i>Notice of Motion and Motion of Community Unit School District 300 for Relief From the Automatic Stay or, in the Alternative, for Abstention</i>
805	11/16/2018	<i>Supplement to Limited Objection of Community Unit School District 300 to Debtors Motion for Authority to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, (C) Grant Certain Protections to Prepetition Secured Parties, and (D) Schedule Second Interim Hearing and Final Hearing</i>
1280	12/17/2018	<i>Debtors' Objection to Motion of Community Unit School District 300 for Relief from the Automatic Stay, or in the Alternative, Abstention</i>
1321	12/18/2018	<i>Affidavit of Susan Harkin (in Support of Motion for Relief from the Automatic Stay or, in the Alternative, for Abstention)</i>
1453	12/31/2018	<i>Notice of Presentment of Stipulation and Agreed Order By and Among The Village of Hoffman Estates, Sears Holdings Corporation and Community Unit School District 300 Concerning Funds Held Pursuant to The Economic Development Area and Tax Increment Allocation Act</i>
1548	1/11/2019	<i>Stipulation and Order signed 1/11/2019 By and Among the Village of Hoffman Estates, Sears Holdings Corporation and Community Unit School District 300 Concerning Funds Held Pursuant to the Economic Development Area and Tax Inclement Allocation Act</i>
1731	1/18/2019	<i>Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction</i>

1774	1/23/2019	<i>Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction</i>
2087	1/28/2019	<i>Limited Objection of Community Unit School District 300 to Debtors Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction</i>
2715	2/28/2019	<i>Motion of Debtors to Compel Turnover of Estate Property</i>
2996	3/29/2019	<i>Community Unit School District 300's (I) Objection to Debtors' Motion to Compel Turnover of Estate Property, and (II) Reply to Debtors' Objection to Motion of Community Unit School District 300 for Relief From the Automatic Stay or, in the Alternative, Abstention, with EDA Agreement attached as Exhibit A</i>
3247	4/16/2019	<i>Supplemental Objection to Debtors' Motion to Compel Turnover of Estate Property</i>
3288	4/18/2019	<i>Objection of Community Unit School District 300 to Debtors' Sixth Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction</i>
3362	4/25/2019	<i>Order Signed on 4/25/2019 Granting Community Unit School District 300's Motion for Abstention</i>
3539	5/2/2019	<i>Notice of Assumption and Assignment of Additional Executory Contracts</i>
3657	5/7/2019	<i>Letter to Judge Drain re: Debtor's Motion for Turnover</i>
3783	5/10/2019	<i>Objection and Reservation of Rights of Community School District 300 to Debtors' Notice of Assumption and Assignment of Executory Contracts)</i>
3895	5/16/2019	<i>Disclosure Statement for Amended Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors</i>
3992	5/22/2019	<i>Limited Objection of Community Unit School District 300 to Disclosure Statement for Amended Joint Chapter 11 Plan of Sears Holdings Corporation and its Affiliated Debtors</i>
4476	7/9/2019	<i>Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors</i>
4713	8/2/2019	<i>Objection of Community Unit School District 300 to Confirmation of the Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and its Affiliated Debtors</i>
5005	8/28/2019	<i>Supplemental Objection of Community Unit School District 300 to Confirmation of the Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and its Affiliated Debtors</i>
5322	10/3/2019	<i>Notice of Presentment of Stipulation and Order By and Among The Village of Hoffman Estates, the Debtors, and The Community Unit School District 300 Concerning 2017 EDA Funds Held in the Special Tax Allocation Fund and Related Matters</i>
5352	10/10/2019	<i>Limited Objection and Reservation of Rights of Transform Holdco LLC to the Proposed Stipulation and Order By and Among the</i>

		<i>Village of Hoffman Estates, the Debtors, and the Community Unit School District 300 Concerning 2017 EDA Funds Held in the Special Tax Allocation Fund, with Exhibit A (Revised Stipulation and Order)</i>
5370	10/15/2019	<i>Order Signed on 10/15/2019 (I)Confirming Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors and (II) Granting Related Relief</i>
5429	10/18/2019	<i>Response of Community Unit School District 300 to Limited Objection and Reservation of Rights of Transform Holdco LLC to the Proposed Stipulation and Order By and Among the Village of Hoffman Estates, the Debtors, and the Community Unit School District 300 Concerning 2017 EDA Funds Held in the Special Tax Allocation Fund</i>
5432	10/21/2019	<i>Debtors' Response to Limited Objection and Reservation of Rights of Transform Holdco LLC to the Proposed Stipulation and Order by and Among the Village of Hoffman Estates, the Debtors, and the Community Unit School District 300 Concerning 2017 EDA Funds Held in the Special Tax Allocation Fund)</i>
5481	10/15/2019	<i>Notice of Hearing on Stipulation and Order by and Among the Village of Hoffman Estates, the Debtors, and the Community Unit School District 300 Concerning 2017 EDA Funds Held in the Special Tax Allocation Fund and Related Matters</i>
5492	10/23/2019	<i>Amended Stipulation and Order signed on 10/23/2019 By and Among the Village of Hoffman Estates, the Debtors, and the Community Unit School District 300 Concerning 2017 EDA Funds Held in the Special Tax Allocation Fund</i>
7872	4/27/2020	<i>Letter to Hon. Robert D. Drain from Luke A. Barefoot, dated April 27, 2020, requesting telephonic status conference</i>
7897	5/1/2020	<i>Letter Dated May 1, 2020 on behalf of Community Unit School District 300 in Response to Letter from Luke Barefoot, dated April 27, 2020, Requesting Telephonic Status Conference</i>
9061	11/2/2020	<i>Motion of Community Unit School District 300 to Deem Economic Development Agreement Rejected Pursuant to the Debtors' Confirmed Chapter 11 Plan, or, in the Alternative, to Compel the Debtors to Reject the Agreement</i>
9062	11/3/2020	<i>Exhibit A to Motion of Community Unit School District to Deem Economic Development Agreement Rejected Pursuant to the Debtors' Confirmed Chapter 11 Plan, or, in the Alternative, to Compel the Debtors to Reject the Agreement</i>
9071	11/6/2020	<i>Supplement to Motion of Community Unit School District 300 to Deem Economic Development Agreement Rejected Pursuant to the Debtors' Confirmed Chapter 11 Plan, or, in the Alternative, to Compel the Debtors to Reject the Agreement</i>
9079	11/11/2020	<i>Objection to Motion of Community Unit School District 300 to Deem Economic Development Agreement Rejected Pursuant to the</i>

		<i>Debtors Confirmed Chapter 11 Plan, Or, In the Alternative, to Compel the Debtors to Reject the Agreement</i>
9082	11/11/2020	<i>Debtors' Opposition to the Motion of Community Unit School District 300 to Deem the Economic Development Agreement Rejected or, in the Alternative, to Compel Debtors to Reject the Agreement</i>
9084	11/11/2020	<i>Declaration of Jared R. Friedmann in Support of the Debtors' Opposition to the Motion of Community Unit School District 300 to Deem the Economic Development Agreement Rejected or, in the Alternative, to Compel Debtors to Reject the Agreement</i>
9095	11/15/2020	<i>Reply of Community Unit School District 300 to Objections to Motion to Deem Economic Development Agreement Rejected Pursuant to the Debtors' Confirmed Chapter 11 Plan, or, in the Alternative, to Compel the Debtors to Reject the Agreement</i>
9116	11/23/2020	<i>Order Denying the Motion of Community Unit School District 300 to Deem Economic Development Agreement Rejected Pursuant to the Debtors' Confirmed Chapter 11 Plan, or, in the Alternative, To Compel the Debtors to Reject the Agreement</i>
9147	12/4/2020	<i>Notice of Appeal of Order Denying the Motion of Community Unit School District 300 to Deem Economic Development Agreement Rejected Pursuant to the Debtors Confirmed Chapter 11 Plan, or, in the Alternative, to Compel the Debtors to Reject the Agreement, with Civil Cover Sheet</i>

B. Transcripts of proceedings:

ECF Docket No.	Date	Description
5463	10/22/2019	<i>Transcript regarding Hearing Held on 4/18/2019 at 10:46 AM re: Debtors Motion to (A) Enforce Asset Purchase Agreement and Automatic Stay Against Transform Holdco LLC and (B) Compel Turnover of Estate Property, and (II) Response to Transform Holdco LLCs Motion to Assign Matter to Mediation</i>
N/A ²	5/8/2020	<i>Transcript regarding Conference Held on 5/8/2020 at 11:30am re: Letter Dated May 1, 2020 on behalf of Community Unit School District 300 in Response to Letter from Luke Barefoot, dated April 27, 2020</i>
9125	11/30/2020	<i>Transcript regarding Hearing Held on 11/20/2020 at 2:30 PM re: Motion To Compel: Motion Of Community Unit School District 300 To Deem Economic Development Agreement Rejected Pursuant To The Debtors Confirmed Chapter 11 Plan, Or, In The Alternative, To Compel The Debtors To Reject The Agreement</i>

² Transcript attached hereto as **Exhibit A**.

Dated: New York, New York
December 17, 2020

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